IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5681 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RASHMIKABEN PURUSHOTTAMBHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR DHIRENDRA MEHTA for Petitioner(s) : 1,
MR MAULIK NANAVATI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/12/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner who was claiming appointment as a Primary Teacher has

prayed for an appropriate order declaring that the age eligibility of completion of 18 years of age as on 1.7.1992 as required as per the column No.4 of the printed format of application and conditions /instructions Nos.6 and 14 mentioned in the sheet of instructions and attached thereto (Annexure-B) are illegal, being inconsistent with the statutory rules.

2. It appears that at the time of hearing of the present Special Civil Application, the petitioner contended that the decision in Special Civil Application No.7927 of 1992 raising identical question was subject to further appeal before the Division Bench being Letters Patent Appeal No.289 of 1993 and as the said L.P.As., were pending and initially even the interim orders were granted directing to consider the case of those original petitioners on merits, this Court admitted the present Special Civil Application and granted the interim order directing the respondents to consider the petitioner's application for appointment as a Primary Teacher pursuant to the advertisement dated 13.10.1992 and further directed that if the petitioner is found to have attained the standard of selection set out by the respondent No.2, the petitioner shall be called for interview and may also be offered appointment if she is selected according to her merit. However, it was also further observed by

this Court that if such appointment is made, the same shall be subject to the result of this petition. This Court also further observed that in the event, the petitioner loses in this petition, she shall not be entitled to claim equity on account of such appointment. It appears that this Special Civil Application was ordered to be heard along with Special Civil Application No.1843 of 1997. It is reported by Shri Maulik Nanavati, learned AGP that the aforesaid Special Civil Application No.1843 of 1997 was ordered to be heard along with Letters Patent Appeal No.302 of 1993 and the said Letters Patent Appeal has already been dismissed by the Division Bench of this Court. He has also relied upon the judgment of the Division Bench of this Court dated 10.3.1998 passed in Letters Patent Appeal No.289 of 1993 and other cognate matters by which, the Division Bench of this Court upheld the above conditions. On going through the judgment and order passed by the Division Bench of this Court in the aforesaid L.P.A. No.289 of 1993 and other cognate matters, it appears that the dispute which has been raised in the present Special Civil Application is squarely covered by the said decision.

3. Under the circumstances and for the reasons stated in the decision of the Division Bench of this Court dated 10.3.1998 passed in aforesaid L.P.A. No. 289 of 1998 upholding the above

conditions, the present Special Civil Application is required to be dismissed.

4. For the reasons stated above, the petition fails. Rule is discharged. Ad-interim relief, if any, stands vacated forthwith. If any appointment is made pursuant to the impugned direction issued by this Court dated 23.9.1997 and considering the observations made by this Court that the said appointment will be subject to the result of the present Special Civil Application and that the petitioner shall not be entitled to claim equity on account of such appointment, on dismissal of present Special Civil Application and vacating the interim order, if the petitioner is appointed pursuant to the interim order dated 23.9.1997 she will not be entitled to continue in service as a Primary Teacher on the basis of the aforesaid order. No costs.

(M.R.SHAH, J.)

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